In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 706

EVERETT V. COOPER AND GEORGE GALE COOPER, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 15–18; R. 756–759) is reported at 227 F. 2d 814.

JURISDICTION

The judgment of the Court of Appeals was rendered on December 16, 1955 (R. 760) and the petition for rehearing (R. 761–764) was denied on January 23, 1956 (R. 765). The petition for a writ of certiorari was filed on February 20, 1956.

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support petitioners' convictions.

2. Whether there was evidence of a single conspiracy to violate narcotic laws.

3. Whether the court properly admitted in evidence against petitioners testimony of co-conspirators concerning their activities in connection with the conspiracy.

STATEMENT

Petitioners were found guilty by a jury under an indictment which charged them, together with other named co-defendants and co-conspirators, with a conspiracy from about January 1950, to June 1954, to violate federal narcotic laws (count 1) and with substantive narcotics violations (counts 2 and 3) (R. 5–20, 726–727). Petitioner Everett Cooper was sentenced to consecutive terms of imprisonment of five years on count 1 and to four years generally on counts 2 and 3 and to a fine of $1,000 generally on counts 1, 2 and 3 (R. 730–731). Petitioner George Cooper was sentenced generally to a term of imprisonment of three years and to a fine of $250 on counts 1, 2 and 3 (R. 734–735). On appeal the convictions were affirmed (R. 760).

The pertinent evidence may be summarized as follows:

In the early part of 1950, co-defendant Sutton and another made a trip to Mexico for the purpose

of buying marihuana (R. 532–533). None was purchased that time, but subsequently deliveries of marihuana were made to Sutton and to Everett Cooper (R. 453–454, 652). The marihuana was stored on the Cooper farm near Houston, Texas, in buildings to which Everett Cooper and Sutton had the only keys (R. 438–442, 449, 451–452, 470, 544, 539, 585). The deed record to the Cooper farm showed title in one Thomas Cooper, among whose heirs were petitioners George and Everett Cooper (R. 52, 73).

In 1950 one Alexander was convicted of selling marihuana (R. 529). Upon his release in 1952 Sutton told him that he had a "spot" for him in his "organization" and discussed Alexander's making deliveries of marihuana for him. Alexander did not do so but at various times bought marihuana from Sutton for resale (R. 529, 535–536, 543–554).

Early in 1952 in New York City, co-defendant Nathan Johnson, who had purchased marihuana from Sutton (R. 448, 456), introduced George and Ruth Hall to Sutton and asked Hall if he were interested in purchasing marihuana (R. 301, 302). Hall paid Sutton $1,625 for 25 pounds packed in brown bags, which were delivered the next day (R. 302–304).

In April 1952, Hall made other purchases of marihuana which were delivered by various persons named as co-defendants or co-conspirators (R. 305–311). Later, in June, Hall visited

Sutton at his home in Houston, Texas, and discussed arrangements for procuring more marihuana. At that time Sutton, Hall, Everett Cooper, and two men who made deliveries went to the Cooper farm. Everett Cooper used a key in his possession to unlock one of the buildings which contained the marihuana. The members of the party stayed in the building for about two hours wetting down the substance, weighing and packing it for Hall (R. 316–325, 329). Eighty pounds were subsequently delivered to Hall who paid Sutton $7,000, the balance owing Sutton for marihuana (R. 331–334, 337).

Thereafter Hall made other purchases for several thousand dollars each (R. 338–340, 349–350). In July 1952, one delivery was made by a co-defendant and Everett Cooper who suggested that if Hall did business with him only, it would be cheaper (R. 343–344, 649).

Sometime about September 1952, Sutton suggested to Hall that he, rather than Sutton, do business with co-defendants McClendon and Saunders and Hall did take these men as customers (R. 353, 496, 510). On September 23, 1952, McClendon and Saunders were apprehended with marihuana by local police after they left Hall's residence (R. 203–205, 231–235, 240). Hall and his wife were also arrested (R. 209–215, 354).

On February 24, 1953, at Newark, New Jersey, on his way from New York to Houston, Sutton was apprehended by federal narcotic agents and

$9,625 in cash was found in his possession. The money was divided into seven bundles. Attached to each bundle was a slip of paper bearing the initial either "C." or "J." (R. 620–623, 625–627).

On March 23, 1953, about 9 p. m., in execution of a search warrant, federal narcotics agents went to the Cooper farm on which were located two dwellings. They searched the dwellings and found therein a vegetable substance, samples of which upon analysis were found to be marihuana (R. 65–66, 103–105), weighing scales, brown paper bags and waxed paper (R. 46–49, 82–83). The agents maintained a surveillance during the following night. About 7 a. m. the next morning, co-defendants Riley and George Cooper arrived on the farm (R. 51–52, 86, 696). They unloaded some hog feed at the hog pen and fed the hogs. Ed Riley asked how the Cooper boys were doing and complained to George Cooper about not getting enough money for his part of the "deal." He said that his mother was suspicious of what he and the Cooper boys were doing and he told her that they were just tending to the hogs. George Cooper assured Riley that he would get everything that was coming to him. Then Cooper came over to the smaller building and pulled on the lock and chain as if he "were examining it" (R. 74, 87, 697–699). Both men were then arrested (R. 54).

In November 1953, while driving through Tennessee in Everett Cooper's car on his way to New

York, co-defendant Willie Winn was arrested by a member of the Tennessee State police. In the car the police found bags containing a substance which upon analysis was found to be marihuana (R. 191). After his arrest Winn said he wanted to call his "bossman," whom he did not identify. In his possession was found a slip of paper with the following writing on it, "Cypress 45702, 1990 Morris Avenue, Bronx" (R. 99, 110, 115–127). The latter were Sutton's New York telephone number and address (R. 355–356, 690).

Upon request by Treasury agents, neither Sutton, Everett Cooper or George Cooper produced the requisite Treasury forms for the marihuana (R. 58–59, 70, 692–693).

In May, 1954, Gladys "Sutton" accompanied by a federal undercover agent met co-defendant Robledo in Corpus Christi, Texas (R. 271). Robledo told the agent that he would sell narcotics to him since he was with Gladys Sutton "because * * * he had done business with her husband, John Sutton" (R. 275), "many, many times" (R. 276), and agreed to sell the agent 50 pounds for $25 a pound. At that time Robledo asked for one-half of the purchase price which he said he hated to do, "but he [Robledo] was only the boss on this side of the river, that the boss in Mexico was a man by the name of Ochoa, and he had told him to bring half the money back" (R. 276). Accordingly, one-half of the money was paid as arranged and a few days later the other half was

paid to Robledo and a substance which upon analysis was found to be bulk marihuana was delivered to the agent as agreed (R. 277–280, 298).

ARGUMENT

1. Petitioners' challenge (Pet. 2–5) to the sufficiency of the evidence to support their convictions is amply refuted by the record. The testimony leaves no doubt of Everett Cooper's participation in the conspiracy as a principal member thereof. His possession of the marihuana on March 24, 1953, on the Cooper farm as charged in counts 2 and 3, was also established. Everett Cooper with Sutton had the only keys to the Cooper farm buildings where the marihuana was stored. Clearly the possession of that key by Everett Cooper was the "control, dominion" and "authority," which petitioners argue (Pet. 3) is a prerequisite to showing possession of the substance. His actual possession and control of the marihuana on the farm was shown by his visit to the farm in June 1952 when he, with other members of the party, assisted in packing the drug (see Statement, *supra*, p. 4).

As to George Cooper,[1] while the evidence consists only of his presence at the Cooper farm in March, 1953, his conversation with Ed Riley at

[1] George Cooper was found guilty on all counts but received only a general sentence on all counts which did not exceed the maximum sentence which he could have received on any one count (see 18 U. S. C. 371, 26 U. S. C. 2593 (a) and 2557 (b), under which he was convicted).

that time was highly incriminating (see Statement, *supra*, p. 5). It negates any inference that he was there merely to feed the hogs, as petitioner suggests (Pet. 2), and connects him with the conspiracy.

Both courts below having found the evidence sufficient to support the convictions there is no occasion for further review by this Court. See *Kann* v. *United States*, 323 U. S. 88, 93; *United States* v. *Johnson*, 319 U. S. 503, 518; *Delaney* v. *United States*, 263 U. S. 586, 589–590.

2. Petitioners' contention (Pet. 8–10) that the evidence showed multiple conspiracies rather than one over-all conspiracy is not supported by the facts which point to a unified continuing scheme in which petitioners, Sutton, Ochoa and Robledo were the core. Its purpose was to purchase marihuana in Mexico and sell it in wholesale lots to dealers in the United States who would then resell it. The facts also point to general knowledge of such a conspiracy on the part of all the participants and to their participation therein. The fact that the dealers were not always the same—as for example Hall at one time, Nathan Johnson and Saunders at another time—is not significant since the scheme by its very nature envisioned a number of dealers. The facts of this case are thus closely analogous to *Blumenthal* v. *United States*, 332 U. S. 539, and very different from *Kotteakos* v. *United States*, 328 U. S. 750, upon which petitioners rely (Pet. 9, 10). See

also *United States* v. *Rosenberg*, 195 F. 2d 583 (C. A. 2), certiorari denied, 344 U. S. 838, and *United States* v. *Ganey*, 187 F. 2d 541 (C. A. 2).

3. Finally, petitioners challenge (Pet. 5–8, 10–12) a number of the trial court's evidentiary rulings.

The deed showing title to the farm on which marihuana was stored and processed, in Thomas Cooper, deceased, among whose heirs were petitioners, was clearly relevant as tending, along with other evidence, to connect petitioners to the conspiracy charged (see Pet. 6–7).

Petitioners' remaining contentions relate to the admissibility against them of evidence relating to the activities of various persons charged as co-conspirators. The short answer to these contentions is that, in accordance with settled principles, evidence relating to the activities of co-conspirators in furtherance of a conspiracy is admissible against all members of the conspiracy.[2] *Lutwak* v. *United States*, 344 U. S. 604; *Krulewitch* v. *United States*, 336 U. S. 440, 443; *Fiswick* v. *United States*, 329 U. S. 211, 217; *Pinkerton* v. *United States*, 328 U. S. 640, 645–647. Thus evidence relating to the activities of various dealers

[2] As shown by the Statement, *supra*, the conspiracy established was a continuing one throughout the period covered by the proof. The question of the admissibility of declarations made by co-conspirators after termination of the conspiracy, which was discussed in *Lutwak* v. *United States*, 344 U. S. 604, 617–619, relied on by petitioners (Pet. 5–6) is, therefore, not involved.

who purchased marihuana from Sutton and did not know petitioners, to the discovery of large quantities of money in Sutton's possession (see Statement, *supra,* pp. 4–5), to Sutton's possession of marihuana, to Saunders' and McClendon's dealings in marihuana in New York (see Statement, *supra,* p. 4), and to the destruction by government officials (see R. 197, 607–608), after sample analyses, of marihuana found in the possession of co-conspirators (see Statement, *supra,* pp. 5–6) plainly was admissible.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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